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SEP 8 - 1949

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IN THE

# Supreme Court of the United States

October Term 1949

No. 239

FREDERICK J. BOYCE, ZELMA L. BOYCE, AGNES S. BRODIE, A. J. HENNEMAN, D. N. KARALIS, C. H. KAVALARIS, B. F. LEE, LUCILE R. LEE, JOHN NASHAPOULIS, MARIE W. OWEN, EMIL POULIOT, CLARA POULIOT, J. V. PIDGEON, H. RYDELL, CHARLES GRANT, J. ADDISON ENGLAND, and H. J. WALDROFF,

*Petitioners,*

vs.

CHEMICAL PLASTICS, INC., BANKRUPT,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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vs.

CHEMICAL PLASTICS, INC., BANKRUPT,

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

## QUESTION PRESENTED

**The sole question presented to the Court of Appeals was whether, under the law of Minnesota, the directors and stockholders of a Minnesota corporation may ratify a voluntary petition in bankruptcy filed on its behalf by its president and assistant treasurer, pursuant to informal authority from a majority of its board of directors.**

## SUMMARY OF ARGUMENT

This case involves merely the application of Minnesota law to the internal relationships of the officers, directors and stockholders of a Minnesota corporation. The petitioners have relied, throughout these proceedings, on a narrow and technical point of corporate procedure. The irrelevance, in bankruptcy law, of alleged irregularities in internal corporate management has already been settled by this Court in *Royal Indemnity Company v. American Bonding Company*, 289 U. S. 165 (1933). There is no substantive question of bankruptcy law here which would occasion the granting of certiorari.

## ARGUMENT

In both the District Court and the Court of Appeals, the petitioners have relied solely on a narrow and technical point of corporate procedure arising under Minnesota law. The Court of Appeals, in its opinion (R. p. 96), summarized the issue as follows:

> "The validity and effect of the ratification in this case depends, then, upon whether the board of directors of a Minnesota corporation organized under Minnesota law would have authority in the first instance to file a petition in voluntary bankruptcy. This must be determined by the laws of Minnesota."

Undoubtedly the District Court had jurisdiction over the subject matter here. The trial court found that, at the time the petition was filed, the corporation was hopelessly insolvent and that its executive committee and officers acted in entire good faith in seeking relief in the bankruptcy court. The District Court also had jurisdiction over the person of the bankrupt. The corporation was before the court in the only way in which a corporation can be present, through its officers. It is the general rule that the president of a corporation may bring a corporation into court by instituting legal proceedings on its behalf.

*Reno Water Co. v. Leete,* 30 Pac. 702 (Nev. 1882)

*Winfield Mortgage & Trust Co. v. Robinson,* 132 Pac. 979 (Kans. 1913)

*Old Dominion Trust Co. v. First National Bank,* 260 Fed. 22 (C. C. A. 4th, 1919)

*Elblum Holding Corporation v. Mintz,* 1 A. (2d) 204 (N. J. 1938)

His subsequent responsibility, if any, to his directors and stockholders for taking such action involves solely the law of the state which establishes the rules of corporate practice.

It has already been settled by this Court that alleged irregularities in internal corporate management have no impact upon bankruptcy proceedings. In *Royal Indemnity Company v. American Bonding Company*, 289 U. S. 165 (1933), this Court said, at page 171:

> "The petition in a voluntary or involuntary proceeding is a pleading. The entry of an adjudication vests title in the trustee, and this is the act of the Court, not of the petitioner. * * *
>
> "We might rest our decision as to the second question upon this ground. But there is another equally persuasive. Statutes such as the one relied on are intended for the protection of stockholders and have nothing to do with the interests or rights of creditors. Even if action of directors authorizing the filing of a voluntary petition, or admitting inability of the corporation to pay its debts and its willingness on that ground to be adjudged a bankrupt, thus creating an act of bankruptcy under Sec. 21 of the Act, were in excess of the authority conferred, or otherwise invalid, creditors could not for that reason attack the consequent adjudication. The question is purely one of the internal management of the corporation. Creditors have no standing to plead statutory requirements not intended for their protection. If the stockholders' rights had been infringed, and they choose to waive them, a creditor could not assert them in opposing an adjudication."

The only question before the Court of Appeals was one of internal management of the bankrupt corporation, as governed by Minnesota law. There is nothing in the narrow issue

involved which this Court need review. It is respectfully submitted that the petition for certiorari should be denied.

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